

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Terrence John Morris

Art Unit: 3749

Application No.: 10/760,130

Examiner: Alfred Basicas

Filed: 01/16/2004

Attorney Docket No.: 504835-041125

For: BURNER HEADS AND BURNERS

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is filed in response to the Examiner's Answer mailed 06/16/2008.

I. Status Of Claims

Independent claim 1 and dependent claims 3-16 are pending, are finally rejected, and are being appealed. Claim 2 was cancelled by an Amendment dated January 31, 2006.

II. Grounds Of Rejection To Be Reviewed On Appeal

A. Independent claim 1 and dependent claims 6, 9, 15 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,733,170 to Kobayashi et al. in view of JP01203064 to Arai.

B. Dependent claims 3-5, 7, 8 and 10-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobayashi in view of Arai, and further in view of US Patent No. 5,387,399 to Nishida, et al.

III. Argument

1. Arai is Nonanalogous Prior Art

This is the second appeal in this application, and the Examiner's search results once again include only a water handling device to show the alleged obviousness of wedge wire for a burner nozzle. Regarding Arai as nonanalogous art, the Examiner's Answer states that "a burner nozzle is little more than a fluid nozzle." However, the law of nonanalogous art recognizes a similarity of structure, but excludes it under 35 U.S.C. 103 because the similarity appears only when taken out of context. In this case, a person of ordinary skill can find wedge wire only in the context of a water nozzle. The question is not whether that wedge wire is structurally capable of use in a burner, but whether a person of ordinary skill would find it *obvious* to use it in a burner. Appellants respectfully submit that the answer is No.

2. The Analogous Prior Art Teaches Away

The Examiner's Answer debates the reason why Brooker's wedge wire device extinguishes the flame. The reason is irrelevant. Furthermore, the reason is not merely irrelevant, but requires a level of analysis that would never happen once a person of ordinary skill realizes the flame *will be* extinguished. Accordingly, under 35 U.S.C. 103, the analogous prior art patent to Brooker does indeed teach "the flame extinguishing capabilities ... of spiral wound wedge wire screen" as explained in the Amended Appeal Brief.

2. The Screens are Not Interchangeable

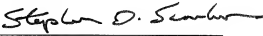
As noted in the Examiner's Answer at page 5, "the rejection clearly recites motivation." True enough—the *rejection* recites all the motivation the Examiner needs to combine the references. It is the references themselves that fail to provide the motivation needed by a person of ordinary skill in the art.

Kobayashi teaches that his burner is “especially suited” for heating and drying, and attributes that quality to the weave length characteristic. See column 8, lines 46-48. It logically follows that a burner without Kobayashi’s weave length characteristic would be inferior, and that a burner with no weave length characteristic would be inferior still. This is certainly not a motivation to replace the woven screen with a non-woven screen. Instead, as explained in the Amended Appeal Brief, it teaches that the screens are *not interchangeable*.

B. Nishida Contributes Nothing to the Combination of References

Without specifically referring to any of the structural limitations recited in claims 3-5, 7, 8 and 10-14, the Examiner’s Answer proclaims that each and every limitation of those claims is made obvious by Nishida. Appellants stand by the arguments presented to the contrary in the Amended Appeal Brief.

Respectfully submitted,

By: 
Stephen D. Scanlon, Reg. No. 32,755
Jones Day
North Point
901 Lakeside Ave.
Cleveland, Ohio 44114
(216) 586-7506